

No. 15281

United States
Court of Appeals
for the Ninth Circuit

JOHN YANDELL,

Appellant,

vs.

TRANSOCEAN AIR LINES, a Corporation,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

OCT 24 1956

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Answer	7
Attorneys, Names and Addresses of.....	1
Certificate of Clerk.....	19
Complaint	3
Memorandum and Order.....	13
Notice of Appeal.....	17
Statement of Points and Designation of Record, Appellant's	18

NAMES AND ADDRESSES OF ATTORNEYS

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J. ADRIAN PALMQUIST,
505 First Western Bank Bldg.,
Oakland 12, California,
For Libelant & Appellant.

BERRY & DAVIS,
1202 Bank of America Bank Building,
Oakland 12, California,
For Respondent & Appellee.

In the District Court of the United States
Northern District of California, Southern Division

Civil No. 33055

In Admiralty No. 27203

JOHN YANDELL,

Plaintiff,

vs.

TRANSOCEAN AIR LINES, a Corporation, and
JOHN DOE SORENSON,

Defendants.

COMPLAINT FOR ASSAULT AND BATTERY

Comes now plaintiff John Yandell and complains
of defendants and for cause of action alleges:

I.

That at all times herein mentioned, defendant
Transocean Air Lines was and is a corporation duly
organized and existing by law.

II.

That at all times herein mentioned, defendant
John Doe Sorenson was and is a servant, agent and
employee of the said defendant, Transocean Air
Lines, a corporation, and was acting in the full
course and scope of his employment.

III.

That on or about the 31st day of July, 1952, de-
fendant John Doe Sorenson was employed by the

defendant Transocean Air Lines as a manager of a certain mess hall located on Wake Island, an island owned by the United States of America.

IV.

That on or about the 31st day of July, 1952, plaintiff was employed as an air lines pilot for California Eastern Airways, Inc.; that on said date, his duties as said employee had taken him to Wake Island, a possession of the United States of America, as aforesaid; that at said time and place, there was in effect an agreement between California Eastern Airways, Inc., and Transocean Air Lines whereby pilots and employees of California Eastern Airways, Inc., were billeted in Transocean Air Lines quarters and were fed in the Transocean Air Lines mess hall; that plaintiff, in accordance with said agreement, paid his bed and lodging bill in the amount of Twenty and Forty/100 Dollars (\$20.40) to Transocean Air Lines for the period of July 31 to August 1, 1952.

V.

That on or about the 31st day of July, 1952, plaintiff John Yandell entered the aforementioned mess hall, which was being managed as aforesaid by defendant John Doe Sorenson; that the plaintiff, John Yandell asked defendant John Doe Sorenson if arrangements could be made to obtain a meal for said plaintiff; that at said time and place, defendant John Doe Sorenson, while acting as manager of the aforesaid mess hall and acting in the full course and scope of his employment as an employee

of said defendant, Transocean Air Lines, approached plaintiff and, without cause or provocation, unlawfully and unjustly assaulted plaintiff by striking him many times over the head and about other portions of his body with an object, unknown to plaintiff at this time, with great force and violence.

VI.

That as a direct and proximate result of the unlawful and unjust assault on plaintiff as aforesaid, plaintiff suffered the following serious and grievous injuries, to wit:

Severe lacerations of the forehead, left ear, left mastoid area, and head; concussion with resulting injury to the brain and impairment of his eyes and left ear; multiple bruises and abrasions about the body.

That by reason of plaintiff's said injuries, proximately caused as aforesaid, plaintiff was made sick, sore, lame and disabled and plaintiff is informed and believes and, on such information and belief, alleges that his injuries are permanent in their character.

VII.

That as a direct and proximate result of the said unlawful and unjust assault on plaintiff as aforesaid, and the injuries to plaintiff proximately caused thereby, plaintiff was required to and did secure the services of duly licensed physicians and surgeons and roentgenologists in the care and treatment of his said injuries; that the cost of said

treatment and services to date is unknown to plaintiff at this time and plaintiff is informed and believes and, on such information and belief, alleges that he will be required to secure additional such services in the future care and treatment of his said injuries, proximately caused as aforesaid, and plaintiff prays leave of Court to amend his complaint to set forth the full extent of his damage in this regard when the same has been ascertained.

VIII.

That at the time of the assault hereinbefore referred to, plaintiff was an able-bodied man and employed as an air lines pilot; that as a direct and proximate result of the said assault and the injuries proximately caused thereby, plaintiff has lost time from his work and is informed and believes that he will be required to lose time from his employment in the future, and prays leave of Court to amend his complaint to set forth the full damage in this regard when the same has been ascertained.

IX.

That as a direct and proximate result of the said assault as hereinbefore set forth, and the injuries to plaintiff proximately caused thereby, plaintiff has been generally damaged in the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

X.

That in doing and committing the assault, defendant John Doe Sorenson acted maliciously and

was guilty of a wanton disregard of the rights and feelings of plaintiff, and by reason thereof, plaintiff demands exemplary and punitive damages against said defendants, and each of them, in the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00).

Wherefore, plaintiff prays judgment against said defendants and each of them in the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) as compensatory damages, and the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) as exemplary and punitive damages, for his costs of suit herein incurred, and for such other and further relief as to the Court may seem just and proper.

/s/ J. ADRIAN PALMQUIST,
Attorney for Plaintiff.

[Endorsed]: Filed September 16, 1953.

[Endorsed]: Filed October 4, 1955.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR
ASSAULT AND BATTERY

Comes now defendant Transocean Air Lnes, a corporation, and answering plaintiff's complaint on file herein admits, denies, and alleges as follows:

I.

Answering paragraph I of said complaint this

answering defendant admits that it was and is a corporation duly organized and existing by law.

II.

Answering paragraph II of said complaint this answering defendant admits that Martin Sorenson (sued herein as John Doe Sorenson) was at all times herein mentioned a servant, agent and employee of defendant Transocean Air Lines, a corporation, but denies that at all times herein mentioned he was acting in the course and scope of his employment.

III.

Answering paragraph III of said complaint this answering defendant admits the allegations therein contained.

IV.

Answering paragraph IV of said complaint this answering defendant alleges that it has no information or belief as to whether plaintiff was employed as an air lines pilot for California Eastern Airways, Inc. on or about the 31st day of July, 1952, or whether his duties as said employee had taken him to Wake Island, a possession of the United States of America, and basing its answer on said ground denies said allegations;

Further answering said paragraph IV this answering defendant admits that there was in effect an agreement between California Eastern Airways, Inc. and Transocean Air Lines whereby pilots and employees of California Eastern Airways, Inc. were

billeted in Transocean Air Lines quarters and were fed in the Transocean Air Lines mess hall subject to certain reasonable and necessary rules and regulations laid down by Transocean Air Lines;

Further answering said paragraph IV this answering defendant alleges that it has no information or belief as to whether plaintiff paid his bed and lodging bill in the amount of \$20.40 to Transocean Air Lines for the period of July 31st to August 1st, 1952, and basing its answer on that ground denies said allegation.

V.

Answering paragraph V of said complaint this answering defendant alleges that on or about the 31st day of July, 1952, the plaintiff entered the private living quarters of said Martin Sorenson in said mess hall building and demanded that he and his party be served with a meal and that whatever altercation or episode occurred took place in said private living quarters of said Martin Sorenson;

Further answering said paragraph V of said complaint this answering defendant denies that at said time and place said Martin Sorenson either in his official capacity with Transocean Air Lines or on his own behalf assaulted plaintiff in any fashion, and further denies that said Martin Sorenson struck plaintiff many times over the head or about the body.

VI.

Answering paragraph VI of said complaint this answering defendant denies that plaintiff's alleged

injuries resulted from an alleged unlawful and unjust assault on plaintiff by said Martin Sorenson.

Further answering said paragraph VI this answering defendant alleges that it has no information or belief as to whether said alleged injuries made plaintiff sick, sore, lame or disabled, or that said injuries are permanent in their character, and basing its answer on that ground denies said allegation.

VII.

Answering paragraph VII of said complaint this answering defendant denies that as a direct and proximate result of an alleged unlawful and unjust assault on plaintiff, plaintiff was required to and did secure the services of duly licensed physicians and surgeons and roentgenologists in the care and treatment of his said injuries.

VIII.

Answering paragraph VIII of said complaint this answering defendant has no information or belief as to whether the plaintiff was an able-bodied man employed as an air lines pilot, or that plaintiff lost time from his work, or that he will be required to lose time from his employment in the future, and basing its answer on said ground denies said allegations.

IX.

Answering paragraph IX of said complaint this answering defendant denies that plaintiff has been generally damaged in the sum of \$150,000.00, or in

any other sum, as a result of an alleged assault and the injuries to plaintiff proximately caused thereby.

X.

Answering paragraph X of said complaint this answering defendant denies that in fact said Martin Sorenson committed an assault, or that said Martin Sorenson acted maliciously and was guilty of wanton disregard of the rights and feelings of plaintiff;

Further answering said paragraph X this answering defendant denies that plaintiff is entitled to exemplary or punitive damages in the sum of \$100,000.00 or in any sum.

As a separate defense this answering defendant alleges that at the time and place described in plaintiff's complaint and immediately prior to the time plaintiff suffered his alleged injuries and damages, if any there were, plaintiff was a trespasser in the private living quarters of said Martin Sorenson, and that at said time and place plaintiff wilfully, wrongfully and unlawfully perpetrated and committed an assault upon said Martin Sorenson and himself provoked and was the aggressor in whatever altercation or episode occurred at said time and place; that by reason of plaintiff's said assault upon said Martin Sorenson the latter was required to act in his own self defense and all force used by said Martin Sorenson toward plaintiff, if any, was justifiably employed by said Martin Sorenson in resisting plaintiff's assault and in said Martin Sorenson's self defense; that by reason of the foregoing

facts alleged in this special defense plaintiff proximately caused and contributed to all injuries and damages suffered by him at said time and place, if any there were.

As a further, separate defense this answering defendant alleges that the plaintiff has been guilty of laches and unreasonable delay in bringing this action, resulting in prejudice to the defendant, and that the cause of action resulting from the alleged assault and resulting injuries is barred by the applicable statute of limitations pertaining to such alleged acts and civil offenses occurring on Wake Island.

Wherefore, this answering defendant prays that plaintiff take nothing by reason of his complaint, and that defendant be hence dismissed with its costs of suit incurred herein.

BERRY AND DAVIS,

By /s/ WILLIAM N. CHANNELL,
Attorneys for Defendant Transocean Air Lines, a
Corporation.

Receipt of copy acknowledged.

[Endorsed]: Filed October 20, 1953.

[Endorsed]: Filed October 4, 1955.

In the United States District Court for the North-
ern District of California, Southern Division

In Admiralty 27203

JOHN YANDELL,

Plaintiff,

vs.

TRANSOCEAN AIR LINES, a Corporation, and
JOHN DOE SORENSON,

Defendants.

MEMORANDUM AND ORDER

This action was originally filed on the civil side in which plaintiff sought damages for alleged injuries resulting from an alleged assault and battery by an employee of defendant on plaintiff. It is undisputed that the occurrence out of which the action arose took place on Wake Island, an insular possession of the United States. Plaintiff had demanded a jury trial, but when the case came on for trial he waived a jury and moved that the case be transferred to the admiralty side. This motion was granted and the case was tried in admiralty before the Court. Defendant consented to the waiver of a jury, and before the trial moved for judgment on the pleadings on the ground that the action was barred by the statute of limitations. Ruling was reserved on this motion, and the case proceeded to trial.

At the conclusion of the evidence a motion to restore the case to the civil docket was made and

ruling was reserved. In view of the provisions of 48 U.S.C. 644a the question of the jurisdiction of the Court was briefed and submitted. Section 644a by its language raises serious jurisdictional questions. It reads in pertinent part as follows:

“The jurisdiction of the United States District Court for the District of Hawaii is extended to all civil and criminal cases arising on or within * * * Wake Island, * * * All civil acts and deeds consummated and taking place on any of these islands or in the waters adjacent thereto, and all offenses and crimes committed thereon, or on or in the waters adjacent thereto, shall be deemed to have been consummated or committed on the high seas on board a merchant vessel or other vessel belonging to the United States and shall be adjudicated and determined or adjudged and punished according to the laws of the United States relating to such civil acts or offenses on such ships or vessels on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks, and keys. * * *” (Emphasis added.)

However, it is not necessary to decide the jurisdictional questions which may flow from this Section because the action must be dismissed whether tried in admiralty or as a civil action. The complaint states that the alleged assault took place on or about July 31, 1952, and the complaint was filed on September 16, 1953, more than one year after the claim for relief arose.

The only applicable statute of limitations is Section 340(3) of the Code of Civil Procedure of the State of California, which provides that an action for assault and battery must be commenced within one year. This statute would completely bar a common law recovery in an action at law since this Court is bound to apply the statute of the State in which the action was brought, if there is no applicable statute of the place where the alleged assault occurred. Counsel have not cited and research does not disclose any such other statute.

Plaintiff, now libellant, seeks to avoid these implications by asserting that the action, whether in admiralty or as a civil action, is triable under the general maritime law because of the language of Section 644a, and the admiralty doctrine of laches, rather than the statute of limitations is applicable. He further asserts that there has been no showing of prejudice to the defendant, or respondent, by reason of the late filing to establish the defense of laches.

These assertions overlook the principle that in actions for personal injuries admiralty will apply the common law limitations by analogy unless equitable reasons exist for not doing so. See: 2 C.J.S. 173; *Pope v. McGrady Rogers Co.*, 70 F. Supp. 780, affirmed 164 F. 2d 591; *Sloand v. U. S.*, 93 F. Supp. 83; *Le Gate v. The Panamolga*, 221 F. 2d 689. The premise of this rule seems to be that admiralty, while not bound by the common law limitations, will adopt them by analogy where it would be incon-

sistent to permit a libel in admiralty which would be barred if started as an action at common law.

The reason for the application of the rule here is more convincing because the action here could never be tried in admiralty, but for Section 644a. The alleged assault took place on land; the participants were an airline pilot and the steward of a mess hall maintained by the defendant airline; there were no vessels involved, and no possible connection with maritime commerce on the high seas; without the language of Section 644a the action would have been tried at common law, and the California statute of limitations would have barred the action. In such a situation, without a showing of some equitable reason for not adopting the common law limitation it would be inconsistent and unseemly for admiralty to permit the action to be tried. If the action is one properly triable at law it is barred by the statute of limitations; if it is properly triable in admiralty it is barred by laches. The action, therefore, must be dismissed.

It is, therefore, Ordered that the action be, and the same is hereby dismissed.

Dated: August 2, 1956.

/s/ OLIVER J. CARTER,

United States District Judge

[Endorsed]: Filed August 2, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: The Honorable Oliver J. Carter, Judge of the
United States District Court, for the Northern
District of California, Southern Division:

Plaintiff John Yandell hereby appeals from that
Order of the above entitled Court, and the Honorable
Oliver J. Carter, Judge thereof, made and
entered in the above-entitled matter on the 2nd day
of August, 1956, dismissing the within action.

This notice is filed for the purpose of complying
with the requirements of the provisions of Rule 73
(b), Rules on Appeal.

Dated: August 30, 1956.

/s/ JOHN J. PURCHIO and

/s/ J. ADRIAN PALMQUIST,
Attorneys for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed August 31, 1956.

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD

To: The Honorable United States District Court for
the Northern District of California, Southern
Division:

Plaintiff, John Yandell, in accordance with Rule
75 (a) of the Rules of Civil Procedure, hereby files
Appellant's Statement of Points and Designation
of Record in the above-entitled cause as follows:

That the Honorable Court erred in dismissing
the within action on August 2, 1956.

Appellant hereby designates the following por-
tion of the record to be contained in the Record on
Appeal:

The Complaint, the Answer, the Memorandum
and Order of the Honorable Court, dated August
2, 1956, and the Notice of Appeal.

Dated: August 30, 1956.

/s/ JOHN J. PURCHIO, and

/s/ J. ADRIAN PALMQUIST,

Attorneys for Plaintiff & Ap-
pellant.

[Endorsed]: Filed August 31, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant;

Complaint for Assault and Battery.

Answer to Complaint for Assault and Battery.

Memorandum and Order.

Notice of Appeal.

Appellant's Statement of Points and Authorities and Designation of Record.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 11th day of September, 1956.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ WM. J. FLINN,
Deputy Clerk.

[Endorsed]: No. 15281. United States Court of Appeals for the Ninth Circuit. John Yandell, Appellant, vs. Transocean Air Lines, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 11, 1956.

Docketed September 18, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.